

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SKYWARD BOUND RANCH,

Plaintiffs,

v.

CITY OF SAN ANTONIO,

Defendant.

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CIVIL ACTION NO.

SA-10-CV-0316 XR

**ORDER DENYING MOTION TO EXCLUDE EVIDENCE OR IN THE ALTERNATIVE
TO COMPEL DISCLOSURES (Docket entry 80)**

The matter before the Court is plaintiff's motion to exclude evidence or in the alternative to compel disclosures (docket entry 80). Also before the Court are defendant's response and plaintiff's reply. By its motion plaintiff asks the Court to sanction defendant for failing to serve its initial disclosures as required by Federal Rule of Civil Procedure 26(a)(1).

I have reviewed defendant's initial disclosures and plaintiff's motion, and find that plaintiff has failed to demonstrate that defendant failed to timely disclose the "name...of each individual likely to have discoverable information...that the disclosing party may use to support its claims or defenses" or "a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody or control and may use to support its claims or defenses...." To the extent plaintiff complains about the lack of production of seized computers or documents, defendant responds that the initial disclosure rules do not require it to produce what it will not use to support its defenses. The Court agrees.

Should defendant attempt to rely on documents or witnesses not timely disclosed

pursuant to Rule 26(a)(1), plaintiff may renew its motion.

Accordingly the motion to exclude or alternatively to compel is ORDERED DENIED.

SIGNED on February 12, 2011.

A handwritten signature in cursive script, reading "Nancy Stein Nowak", is written over a horizontal line.

NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE